IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1785 OF 2001

M/s. Ceat Ltd. ...Petitioner.

Versus

Murphy India Employees' Union. ...Respondent.

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Mr. M.M. Varma with Mr.Rajesh Gehani for the Petitioner.

Ms.Jane Cox for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

January 11, 2005.

ORAL JUDGMENT:

I

These proceedings arise out of an order passed by the Industrial Court on 29th March 2001 holding that the Petitioner had committed unfair labour practices under Items 6 and 9 of Schedule 4 of the the Maharashtra Recognition of Trade Unions and Prevention

of Unfair Labour Practices Act, 1971. The Industrial Court has come to the conclusion that the workmen to whom the complaint before it relates were entitled to the benefit of a settlement dated 29th April 1991 that was arrived at with the recognised Union. The contention of the Petitioner was that the workmen to whom the complaint relates would not be entitled to the benefit of the settlement since one of the clauses of the settlement provided that it would apply to those workmen on the permanent roll of the Petitioner as on 31st December 1990. The Industrial Court has held that the workmen in question would be entitled to the benefit of the settlement. Essentially two issues arise for the consideration of this Court based upon the only two submissions which have been urged: (i) Whether the clause in the settlement dated 29th April 1991 to the effect that the settlement shall cover all the terms and conditions of service of permanent workmen and shall apply to all permanent workmen on the roll of the Company as on 31st December 1990 would exclude the application of the settlement to the complainant workmen for the reason that they became permanent employees of the Company subsequent to the

date of the settlement; and (ii) Whether the workmen in question have correctly been held to be entitled to the benefit of deemed permanency under Model Standing Order 4A of the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946. For the reasons which I now propose to indicate, I am of the view that the Industrial Court is not in error in the conclusion which it has arrived at and that the Petition under Article 226 of the Constitution is accordingly liable to be dismissed.

II

2. The workmen to whom the complaint before the Industrial Court relates were initially employees of a Company by the name of Norwest Electronics Ltd. ("Norwest") until 30th January 1991. Norwest was engaged in carrying out maintenance and repair work for and on behalf of Murphy Limited ("Murphy") of electronic goods including Television Sets. Norwest exclusively performed work for and on behalf of Murphy. The workmen in question were permanent employees of Norwest. Murphy was in financial difficulty and it

appears that in pursuance of proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985, a scheme was framed by the Board for Industrial and Financial Reconstruction in or about August 1990. Murphy accordingly merged with the Petitioner, Ceat Ltd., and became the Electronic Division of the Petitioner with effect from 31st August 1989. According to the complaint before the Industrial Court, after January 1991, the Petitioner herein, effectively carried out maintenance and repair work that was earlier performed by Norwest from its factory situated at Parel and man for man with exactly the same workers who had been employed by Norwest. The workmen to whom the complaint relates, it is common ground, tendered their resignation from Norwest on 30th January 1991. Initially on 1st February 1991, they were appointed on a temporary basis for a period of three months by the Petitioner. Subsequently, with effect from 1st May 1991, the workmen were appointed on probation. These facts have not been disputed. In fact, in the written statement that was filed by the Petitioner before the Industrial Court, the Petitioner categorically admitted that in February 1991, it had

given an option to the employees either to continue in Norwest or to resign from that Company and that such of those persons who would resign would be absorbed by the Petitioner as fresh employees. According to the Petitioner, most of the employees resigned, got their account settled and were employed as new employees with the Petitioner. The Petitioner admitted that these employees were initially employed temporarily and thereafter, were placed on probation.

3. The grievance of the workmen was that as employees of the Petitioner, none of them was receiving even the statutory minimum wage under the Minimum Wages Act. Some of the peons were receiving a paltry amount of Rs.500/- monthly and the junior TV Technicians were drawing a monthly salary of Rs.640/-. The benefits which were being extended to the other workmen of the Petitioner were according to the workmen, denied to them, such as over time payments and compulsory holidays. According to the complaint, each of the workmen was entitled to the benefit of permanency and that the

company by depriving them of that benefit and other facilities extended to regular workmen, had committed unfair labour practices under Item 6 and 9 of Schedule 4 to the Act. In these circumstances, apart from the statutory declaration that was sought, the claim before the Industrial Court was to the effect that the workmen whose names were listed in Annexure A to the complaint, be declared as the permanent workmen of the Petitioner with effect from the respective dates of their joining Norwest and that the Petitioner be directed to grant them the same wages, benefits and facilities that were extended to the other workmen. The Petitioner filed its written statement. The Petitioner did not deny the circumstance that each of the workmen to whom the complaint relates, were initially the workmen of Norwest to whom an option was given either to continue in the Company or to resign. The Petitioner further admitted that the employees were informed that such of them as would resign would be absorbed in the Petitioner as fresh employees. The allegation that there was an unfair labour practice on the part of the employer was denied.

4. Evidence was adduced on behalf of the contesting parties and the complaint eventually resulted in the impugned order of the Industrial Court dated 29th March 2001. The Industrial Court has held that the workmen to whom the complaint relates, were entitled to the benefits of permanency from the expiry of their probationary period of three months commencing from their respective dates of joining the employment of the Petitioner. The Petitioner has also been directed to give to the workmen the benefits and facilities under the settlement dated 29th April 1991 that was entered into with the recognised Union. The monetary benefits have been allowed together with compound interest at the rate of 12% per annum.

5. Two submissions have been urged on behalf of the Petitioner in assailing the order of the Industrial Court. (i) The settlement dated 29th April 1991, it has been submitted, is not applicable to the workmen governed by the complaint who joined the services of the Petitioner after 31st December 1990. The submission

was that the Petitioner could have signed the settlement under the proviso to Section 18(1) of the Industrial Disputes Act, 1947 only with a recognised Union. Hence, in the present case, the recognised Union had accepted the stipulation in the settlement that the settlement would apply only to those permanent workmen who are on the rolls of the Company as on 31st December 1990 at the Company's head office and other factory establishments situated at Bombay and Thane. (ii)The Industrial Court erred in granting the benefit of Section 4A of the Model Standing Orders. The Parel Unit wherein the workmen were employed, was an establishment governed by the provisions of the Bombay Shops and Establishments Act, 1948. Section 38B of the Act stipulates that the provisions of the Industrial Employment (Standing Orders) Act, 1946 in its application to the State of Maharashtra and the Rules of Standing Orders including Model Standing Orders shall apply to all establishments wherein 50 or more employees are engaged. In the present case, it was submitted that less than 50 employees were engaged and that consequently, Model Standing Orders framed under the Industrial

Employment (Standing Orders) Act, 1946 will have no application. These submissions will now be considered.

6. In so far as the first submission is concerned, it would at the outset be necessary to advert to the provisions of Section 18 of the Industrial Disputes Act, 1947. Sub section (1) of Section 18 provides that a settlement arrived at by agreement between the employer and workman otherwise than in the course of a conciliation proceeding shall be binding on the parties to the agreement. The proviso to Section 18 is material for the purposes of the present controversy and it provides as follows :

> "Provided that, where there is a recognised union for any undertaking under any law for the time being in force then such agreement (not being an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee) shall be arrived at between the employer and the recognised union only; and such agreement shall be binding on all persons referred to in clause (c) and clause (d) of sub-section (3) of this section."

7. The effect of the proviso to Section 18(1) is that where a

recognised union is in existence under any law for the time being in force then, the employer is under a mandate and an obligation to arrive at an agreement (other than an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service or suspension) only with the recognised Union. The proviso to sub-section (1) of Section 18, it must be noted, was inserted as a State amendment by Maharashtra Act 1 of 1972 and it has been specifically incorporated in view of the provisions for the recognition of trade union incorporated in the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The proviso to Section 18(1) recognises the principle of one body or agent for collective bargaining, where there is a recognised union in an industrial establishment to which the Act applies. The second important facet of the proviso is that once a settlement is arrived at by the employer with a recognised union, the settlement shall be binding on all persons referred to in clauses (c) and (d) of sub-section 3 of Section 18. Sub-section (3) of Section 18 provides as follows :

> “(3) A settlement arrived at in the course of conciliation

> proceedings under this act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an arbitration award in case where there is a recognised union for any undertaking under any law for the time being in force or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on -
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> (a) all parties to the industrial dispute;
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> (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator], [Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
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> (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
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> (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who are employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

Sub-section (3) of Section 18 deals with the coverage of a settlement that is arrived at in the course of conciliation, an arbitration award or an award of a Labour Court, Tribunal or National Tribunal. Clause (c)

provides that such a settlement or award is binding on the employer as well as his heirs, successors or assigns in respect of the establishment to which the dispute relates. Similarly, clause (d) of sub-section (3) provides that all persons who are employed in the establishment to which the dispute relates on the date of the dispute and all persons who subsequently become employees in that establishment will be governed by the settlement or award. As a result of the proviso to sub-section (1) of Section 18, a settlement which is arrived at with a recognised union is placed on the same footing as a settlement that is arrived at in conciliation or an award of a Labour Court, Tribunal or National Tribunal.

8. Now in the present case, the settlement was arrived at on 29th April 1991. There is intrinsic evidence in the settlement itself to indicate that the settlement would apply to persons who would become permanent employees even after the date of the settlement. Clause 7 of the settlement provided that probation will be governed by the Standing Orders. Clause 8 provided that confirmation will be

governed by the Standing Orders. Clause 10 provided that new recruits will be covered by the Certified Standing Orders and Rules and Regulations of the Company as applicable to all other employees and as amended from time to time. Clause 4 of the settlement dealt with persons who are appointed as apprentices for a period of three years. In that connection Clause 11 provided for their treatment in a regular way after the successful completion of the three years' period. There is, therefore, intrinsic material in the settlement to indicate that the application of the settlement would not stand excluded to those persons who have become permanent employees after that date.

9. Apart from the intrinsic material in the settlement itself, it is to my mind, a matter of first principle that a settlement that is arrived at in the course of conciliation must govern under Section 18(3)(b), workmen who are employees on the date of the dispute as well as persons who became workmen subsequent thereto in the establishment to which the dispute relates. A settlement which is arrived at by the recognised Union is placed on the same footing as a

settlement arrived at in conciliation by virtue of the proviso to sub-section (1) of Section 18. That being the position, it is impossible to accept the submission that the settlement will stand excluded to persons in the position of the complainant workmen who became permanent employees after the date of settlement. As a matter of fact, the settlement was entered into on 29th April 1991. There is no dispute about the fact that the workmen in question were initially appointed on a temporary basis on 1st February 1991 and on probation on 1st May 1991. Even approaching the matter from the perspective that these employees were recruited after the settlement, the principle which is laid down in Section 18(3)(b) of the Industrial Disputes Act, 1947 must apply. The provisions of Section 18(3)(b) are a matter of statutory mandate. They embody fundamental principles of industrial jurisprudence and recognise the importance of conciliation, arbitration and the hierarchy of Courts created by industrial legislation. In Maharashtra, the proviso to Section 18(1) statutorily places the settlement with a recognised Union on the same pedestal. This is a matter of high public policy, statutorily recognised

and cannot be contracted out. There is, therefore, no merit in the first submission.

10. In so far as the second submission is concerned, there is no dispute that under Section 38-B of the Bombay Shops and Establishments Act, 1948, the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 shall apply mutatis mutandis to all establishments wherein 50 or more employees are employed. Counsel appearing on behalf of the Petitioner placed before the Court, the decision of the Supreme Court in **Indian Tobacco Co.Ltd. vs. Industrial Court,** 1995 1 LLJ 846. There is no dispute about the submission urged by Counsel that the aforesaid decision dealt with the provisions of Section 38B as they stood prior to the amendment of 1988 by which the threshold requirement of 50 employees came to be introduced. The line of submission urged on behalf of the Petitioner will, however, not carry the case any further. In so far as the applicability of the Industrial Employment (Standing Orders) Act, 1946 is concerned, Standing Orders in respect of the

Parel establishment were certified in 1963. The only difference, in so far as the period of probation is concerned, is that where as under Model Standing Order 4-A, the probation was to be of three months, under the Certified Standing Orders, the period of probation was extended to six months. Under Model Standing Order 4A, upon the expiry of the period of three months, the employer is under an obligation to pass an order in writing to make the employee permanent within 7 days from the date of completion of such period. The proviso to Model Standing Order 4A lays down that where Certified Standing Orders which prevail on the date of coming into force of this rule prescribe a longer probationary period than three months, the probationer shall complete that probationary period. Consistent with the well settled legal position if the services of a probationer are unsatisfactory, they may be terminated. In the present case, the Industrial Court has noted that there was absolutely no material or even an allegation to the effect that the services of the workmen were unsatisfactory. In fairness, it must be recorded, that this was also not the submission of Counsel.

11. Before the Industrial Court an application was moved on behalf of the complainant for the production of the Certified Standing Orders. In a reply dated 8th September 1999, the Petitioner stated that there was no "such certified standing order applicable to Ceat Ltd. Electronics Division" and, therefore, there was no question of production. Surprisingly, however, after the evidence was recorded and at the stage of arguments, the Petitioner sought to produce a photo copy of the Certified Standing Orders on the file. The Trial Judge was perhaps justified in finding fault with the conduct of the Petitioner. Be that as it may, what is material for the present purposes is that reliance was sought to be placed by the Petitioner on the certified standing orders applicable to the establishment at Parel. Once the Petitioner has chosen to do so, it is clearly not open to it to contend that it is not governed by the Industrial Employment (Standing Orders) Act, 1946.

12. The Petitioner did not dispute the existence of the Certified

Standing Orders since 1963 in relation to the establishment of Parel. Once that be so, then the position in law which is laid down by the Division Bench in **Balkrishna Pillai Vs. Anant Engineering Works**, 1975 II LLJ 391 must govern. An establishment which is governed by the Act of 1946 will not cease to be so governed merely because the number of employees happens to be at a given point of time, below the threshold requirement for the applicability of the Act. In **Balkrishna Pillai's case**, the facts as they emerge from the judgment of Justice P. B. Sawant (as the Learned Judge then was) are that prior to 1965, the Model Standing Orders applied to the First Respondent which employed more than 100 workmen. However, in the years 1967 and 1968, the number of workmen fell below 100 and at the relevant time there were only 34 workmen employed in the establishment. Based on this, it was sought to be urged that the Industrial Employment (Standing Orders) Act, 1946 would not apply and the Model Standing Orders framed thereunder accordingly had no application. The Division Bench rejected the submission. The Court noted that the provisions of sub-section (3) of Section 1 of the

Act evidently relate to the initial application of the Act. The Court held that there was nothing in the provision to suggest that once the Act is made applicable to an Industrial Establishment, the continuation of its application depends upon the number of workmen employed in the establishment. Secondly, noted the Court, there was no provision in the Act providing for a cessation or discontinuance of the application of the Act to an establishment on account of a fall in the number of workmen or on any other account. If the Legislature had intended that the Act should cease to apply to an Industrial Establishment when the number of workmen therein fell below one hundred, there was nothing to prevent it from so providing in explicit terms. Finally the Court held that the Act is a piece of beneficial social legislation and an interpretation which will advance that object has to be adopted:

> "Thirdly, the Act is a beneficial social legislation enacted for the purpose of defining with certainty the terms of contract of employment and thus guaranteeing the workmen their conditions of service. It is common knowledge that before the Act was placed on the statute book the conditions of service of the industrial workmen were undefined, arbitrary, and depended mostly upon the whims and vagaries of the

employer. The Act seeks to make a contract of employment for the workmen and a contravention of the terms of such statutory contract, is made an offence and an employer is liable to be prosecuted for the same. A strong reason is, therefore, necessary to deprive the workmen of an establishment, of the benefits of such statutory contract of service, once the same have accrued to them, and a fall in the number of the workmen employed in the establishment can hardly be said to supply such reason. Lastly, an interpretation which promotes the objects and purpose of the Act will have to be preferred to one which will not only defeat the same, but in this case, will verily lead to a chaos. If the interpretation urged by the petitioners is accepted it will mean that the terms of contract of service will still remain in a fluid condition and fluctuate with the number of workmen employed. It will again be subject to the arbitrary will of the employer, since the number of workmen employed can be varied by him by his unilateral action. Apart from creating uncertainties and confusion with regard to the conditions of service such a situation is bound to lead to industrial unrest, and hamper smooth running of the industry. The said interpretation will, therefore defeat the very purpose sought to be achieved by the Act. The Legislature cannot be said to have intended such a situation. We will have, therefore, to place a beneficial interpretation on the provisions of the Act and one which will be in accord with its policy and hold that once the Act becomes applicable to an industrial establishment it does not cease to apply on account of a fall in the number of workmen in the establishment, below one hundred."

The Parel establishment has certified standing orders in force since

1963. The employer has not disputed that they continue in force. In fact, the employer relied on the Certified Standing Orders. The grant of permanency upon the completion of the period of probation is mandated under the Certified Standing Orders. It has never been the case of the employer that the service of any of thee workmen was unsatisfactory.

13. In sum and substance, therefore, there is no infirmity in the approach or in the finding of the Industrial Court. The workmen to whom the complaint relates were appointed by the Petitioner. By the admission of the Petitioner in paragraphs 7 and 8 of the written statement, the Petitioner had given an option to the employees of Norwest and an assurance that such of them who would resign would be absorbed by the Petitioner as fresh employees. These employees were appointed initially on a temporary basis and were thereafter placed on probation. In terms of the Model Standing Orders, they were clearly entitled to the benefit of permanency on the expiry of the period of probation. There is not a whisper that the services of the

workmen were not satisfactory. The settlement dated 29th April 1991 was arrived at by the Petitioner with a recognised Union and by virtue of the proviso to sub-section (1) of Section 18 of the Industrial Disputes Act, 1947, the benefit of the settlement must bind not merely the workmen who were in the employment of the Petitioner on the date of the dispute, but all those workmen who became employees subsequent thereto. The submission that the Standing Orders will have no application is one lacking both in legal merits and in bona fides. Indeed, the petitioner had sought to rely upon the Certified Standing Orders before the Industrial Court. There were Certified Standing Orders applicable to the establishment at Parel since 1963, in terms whereof the workmen were entitled to the benefit of permanency. The Industrial Court, it must be noted, has declined to grant the wider relief which was sought in the complaint of the grant of permanency with effect from the respective dates of workmen having joined Norwest and the grant of permanency has been confined from the date of completion of the period of probation. All the workmen to whom the complaint relates were retrenched by the petitioner in 1996

and the only surviving question for all practical purposes is the payment of service benefits as on the date of retrenchment. The retrenchment, the Court is informed, has been challenged in separate proceedings. The Industrial Court, has directed that interest be paid to the workmen compounded at the rate of 12% per annum. The ends of justice will be met by confining the grant of interest to simple interest at the rate granted by the Industrial Court. Save and except for the aforesaid, I see no reason to interfere. The order of the Industrial Court shall stand confirmed save and except for the modification that the workmen would be entitled to simple interest at the rate fixed. The Petition is disposed of in these terms. No costs.

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